IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No. 664/1999

Union of India V/ M/s. Dullar Enterprises Pvt. Ltd.

Date of Order : 15th November, 2006

HON'BLE MR.R.S. CHAUHAN, J.

Mr.Ajay Shukla, for Mr. Kamlakar Sharma, for the appellant.
Mr.Rajat Ranjan, for the respondent.

By Court:

The appellant, Union of India, has challenged the order dated 19.2.1999 passed by the Additional District Judge, No.4, Jaipur City, Jaipur whereby an application under Order 9 Rule 13 of the Code of Civil Procedure (henceforth to be referred to as 'the Code', for short) has been rejected.

The brief facts of the case are that the respondent-plaintiff, M/s. Dullar Enterprise Pvt. Ltd. had filed a suit for recovery of Rs.20,00,000/- against the appellant wherein the plaintiff had made the Union of India, Secretary of Finance, Department of Revenue as the sole defendant. In the plaint, the respondent-plaintiff had made

specific allegations against both the officers of Central Excise Department situated at Behror and Jaipur. However, surprisingly the Commissioner, Central Excise Department, Jaipur was not arrayed as a party in the aforesaid suit. The trial court had sent the summon through a registered post on 16.5.1991 and 16.8.1991. Since the appellant did not put in his appearance, therefore, the trial court proceeded ex-parte against the appellant. Eventually, an ex-parte decree and judgment was passed on 31.5.1997 in favour of the plaintiff-respondent. It was only on 29.4.1998, when a notice for attachment was served upon the Commissioner, Central Excise Department, that the appellant came to know about the ex-parte decree dated 31.5.1997. Immediately, on 2.5.1998 the appellant filed an application under Order 9 Rule 13 of the Code for setting aside the ex-parte judgment and decree dated 31.5.1997. However, vide order dated 19.2.1999, the learned Judge has dismissed the said application. Hence, this appeal before this Court.

Mr. Ajay Shukla appearing on behalf of Mr. Kamlakar Sharma, the learned counsel for the appellant, has raised various contentions: firstly, although the plaintiff-respondent had levelled allegations against the officers of the Central Excise Department situated both at Behror and at Jaipur, the Commissioner, Central

Excise Department, Jaipur was never arrayed as a party in the civil suit. Secondly, it was “Union of India through the Secretary of Finance Department of Revenue”, which was arrayed as the sole respondent. In the Department of Revenue, there are two different Secretaries, one Secretary of Finance and the other Secretary of Revenue. The Central Excise Department does not fall under the Secretary of Finance, but falls under the Secretary of Revenue. Therefore, even if the summons were sent through the registered post addressed to Secretary of Finance, the same were not received by the correct concerned authority. The summons should have been issued for Secretary of Revenue and not for Secretary of Finance. Since the summons were received by the Secretary of Finance, neither the Secretary of Revenue nor the Commissioner, Central Excise Department, the two rightful parties, had any knowledge about the existence of the proceedings against the Department. Therefore, they were not in a position to defend the interest of the Government of India. Lastly, he has contended that the case was transferred from one court to another vide order dated 30.9.1991. However, no information was sent by the learned trial court about transferring the case to the Court of Additional District Judge, No.3, Jaipur City, Jaipur. Hence, in the absence of this information, the appellant could not contest the case.

On the other hand, Mr. Rajat Ranjan, the learned counsel for the respondent, has argued that thrice summons were issued to the appellant. The first time the summons were issued with regard to the application filed by the plaintiff-respondent under Order 33 Rule 1 of the Code. Subsequently, the summons were issued twice by the registered post, which were received by the Secretary of Finance Department. Despite receiving the summons on three occasions, the appellant did not appear before the learned trial court. Therefore, the learned trial judge was justified in proceedings ex-parte and in eventually passing a ex-parte judgment and decree in favour of the plaintiff-respondent. Lastly, that the application under Order 9 Rule 13 of the Code has been filed beyond the period of limitation. According to the Limitation Act, thirty days period is granted for filing the application. However, the application has been filed almost after a year. Therefore, the learned trial court was justified in dismissing the application on the ground of limitation.

We have heard both the learned counsels for the parties and have perused the impugned order as well as record.

The right to defend is a constitutional right, which is

available both to a private person as well as to the State. Of course the said right is not an absolute right. It can be curtailed only by procedure established by law. The Code empowers the trial court to proceed ex-parte in case the defendant does not put in appearance after the summons are received. However, simultaneously Order 9 Rule 13 bestows the courts with the power to set aside an ex-parte judgment and decree in case it is convinced that the defendant had sufficient reason for not appearing before the trial court. Despite the receipt of the summons, the power under Order 9 Rule 13 of the Code should be exercised as liberally as possible. The exercise of the powers should be refused not for technical reasons, but when the court is convinced that the defendant has intentionally ignored the summons and has tried to escape from his liability. Since Order 9 Rule 13 of the Code empowers to court to impose a cost on the defendant, it is a clear indication that the Legislature in its wisdom wanted the power to be exercised liberally and not narrowly.

A bare perusal of the impugned order clearly reveals that the learned trial Judge has failed to understand the complexity of the situation. The learned Judge has ignored the fact that the State is a megalith. The Department of Finance situated in Delhi is not a small department, but is a large department of the Government of India.

There are different echelon of officers, all of whom function in the same building. The Central Excise Department falls under the Revenue and not under the Finance Section. There are two different Secretaries, one for the Finance Department and other for the Revenue Department. Therefore, the correct party in the present case was Secretary, Revenue Department and not Secretary, Finance Department. Moreover, and more importantly, when the plaintiff-respondent had categorically made allegations against the Officer of the Central Excise Department situated at Behror and at Jaipur, then the Commissioner, Central Excise Department, Rajasthan, Jaipur was a necessary party. However, the plaintiff-respondent never arrayed the Commissioner, Central Excise Department, Rajasthan, Jaipur as a party. Even if, the summons have been received by the Secretary, Finance Department, they were received by an authority, who had no concern with the Central Excise Department situated at Jaipur. Therefore, although summons may have been received, they were have received by a wrong authority. Clearly neither the Secretary, Revenue Department nor the Commissioner, Central Excise Department, Jaipur had any information or notice of the pending trial. Therefore, the appellant had sufficient reason for not appearing before the trial court.

Learned Judge has also overlooked the fact that the suit was for recovery of Rs.20,00,000/- from the Central Government. Considering the fact that it is public money, that was being recovered by a Company, the learned Judge should have been more circumspect in dismissing the application under Order 9 Rule 13 of the Code. But the learned Judge has dismissed the application ostensibly on the ground of limitation. Since the appellant had sufficient reason for not appearing before the trial court, the question of limitation does not even arise. The limitation would be deemed to begin from the date of the knowledge. The appellant came to know about the ex-parte judgment and decree on 29.4.1998 and filed the application on 2.5.1998 i.e. immediately within three days of the date of knowledge. Thus, the application was well within limitation. Even if, the application was not within the limitation, the delay could have been condoned on the ground that the appellant had no knowledge about the ex-parte judgment and decree as the summons were never received by the appropriate authority.

Therefore, we allow this appeal and quash and set aside the order dated 11.2.1999 as well as the ex-parte judgment and decree dated 31.5.1997 and direct the trial court to recommence the trial. Ample opportunity should be given to the appellant to defend the

case.

With the aforesaid directions, this appeal is allowed. There shall be no order as to costs.

(R.S. CHAUHAN), J.

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